Practicing Under the New Appellate Rules

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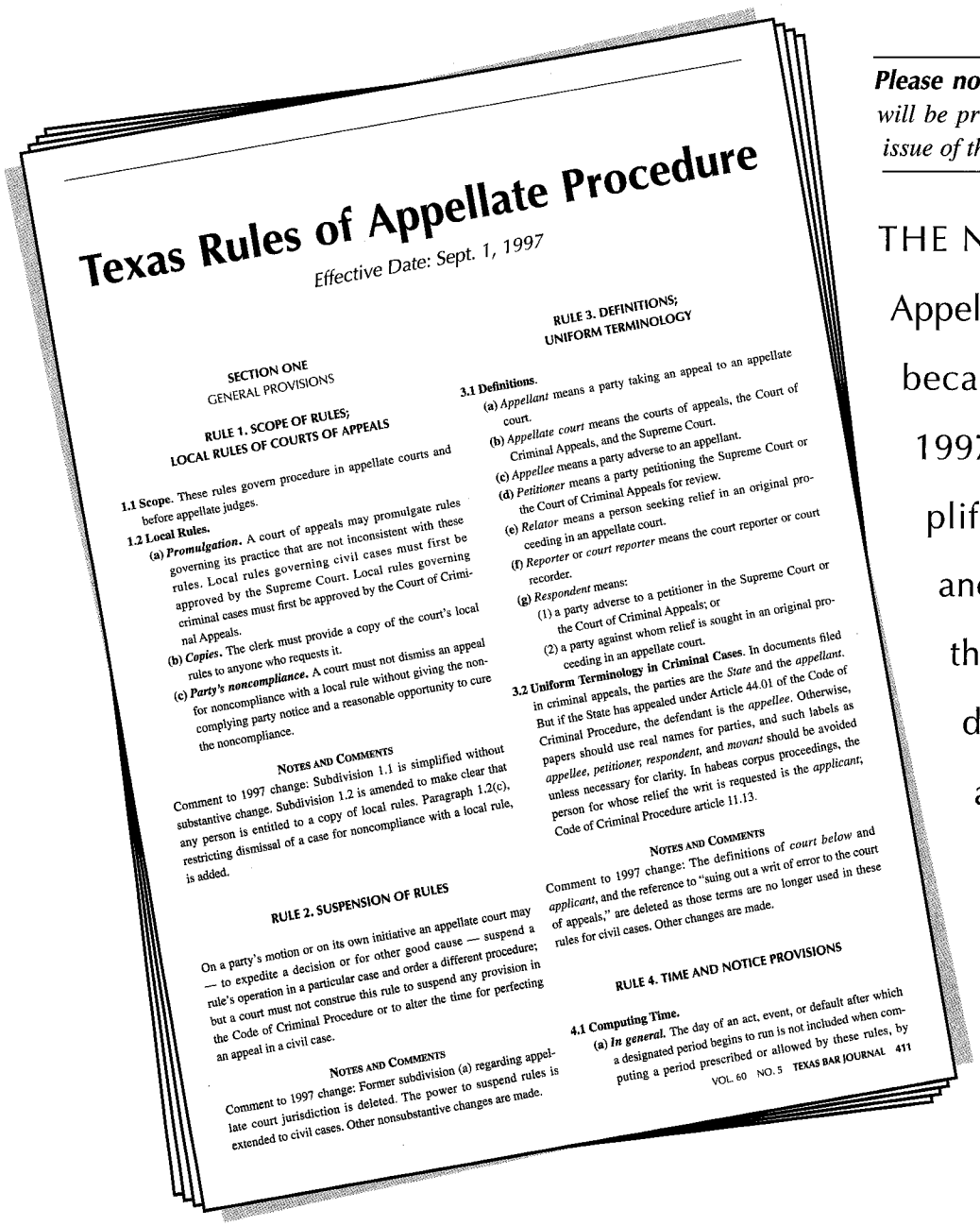

Texas Rules of Appellate Procedure

Effective Date: Sept. 1, 1997

SECTION ONE
GENERAL PROVISIONS

RULE 1. SCOPE OF RULES;
LOCAL RULES OF COURTS OF APPEALS

1.1 Scope. These rules govern procedure in appellate courts and before appellate judges.

1.2 Local Rules.

(a) *Promulgation.* A court of appeals may promulgate rules governing its practice that are not inconsistent with these rules. Local rules governing civil cases must first be approved by the Supreme Court. Local rules governing criminal cases must first be approved by the Court of Criminal Appeals.

(b) *Copies.* The clerk must provide a copy of the court's local rules to anyone who requests it.

(c) *Party's noncompliance.* A court must not dismiss an appeal for noncompliance with a local rule without giving the noncomplying party notice and a reasonable opportunity to cure the noncompliance.

NOTES AND COMMENTS

Comment to 1997 change: Subdivision 1.1 is simplified without substantive change. Subdivision 1.2 is amended to make clear that any person is entitled to a copy of local rules. Paragraph 1.2(c), restricting dismissal of a case for noncompliance with a local rule, is added.

RULE 2. SUSPENSION OF RULES

On a party's motion or on its own initiative an appellate court may — to expedite a decision or for other good cause — suspend a rule's operation in a particular case and order a different procedure; but a court must not construe this rule to suspend any provision in the Code of Criminal Procedure or to alter the time for perfecting an appeal in a civil case.

NOTES AND COMMENTS

Comment to 1997 change: Former subdivision (a) regarding appellate court jurisdiction is deleted. The power to suspend rules is extended to civil cases. Other nonsubstantive changes are made.

RULE 3. DEFINITIONS;
UNIFORM TERMINOLOGY

3.1 Definitions.

(a) *Appellant* means a party taking an appeal to an appellate court.

(b) *Appellate court* means the courts of appeals, the Court of Criminal Appeals, and the Supreme Court.

(c) *Appellee* means a party adverse to an appellant.

(d) *Petitioner* means a party petitioning the Supreme Court or the Court of Criminal Appeals for review.

(e) *Relator* means a person seeking relief in an original proceeding in an appellate court.

(f) *Reporter* or *court reporter* means the court reporter or court recorder.

(g) *Respondent* means:

(1) a party adverse to a petitioner in the Supreme Court or the Court of Criminal Appeals; or

(2) a party against whom relief is sought in an original proceeding in an appellate court.

3.2 Uniform Terminology in Criminal Cases. In documents filed in criminal appeals, the parties are the *State* and the *appellant*. But if the State has appealed under Article 44.01 of the Code of Criminal Procedure, the defendant is the *appellee*. Otherwise, papers should use real names for parties, and such labels as *appellee, petitioner, respondent,* and *movant* should be avoided unless necessary for clarity. In habeas corpus proceedings, the person for whose relief the writ is requested is the *applicant*, Code of Criminal Procedure article 11.13.

NOTES AND COMMENTS

Comment to 1997 change: The definitions of *court below* and *applicant*, and the reference to "suing out a writ of error to the court of appeals," are deleted as those terms are no longer used in these rules for civil cases. Other changes are made.

RULE 4. TIME AND NOTICE PROVISIONS

4.1 Computing Time.

(a) *In general.* The day of an act, event, or default after which a designated period begins to run is not included when computing a period prescribed or allowed by these rules, by

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Please note: *The appellate rules, as amended, will be printed in their entirety in the October issue of the* Texas Bar Journal.

THE NEW TEXAS RULES OF Appellate Procedure,[1] which became effective Sept. 1, 1997,[2] are designed to simplify appellate procedure and increase the likelihood that an appeal will be decided on the merits and not based on procedural oversight.

KEY CHANGES

Key changes under the new appellate rules include:

- To perfect an appeal, a party now simply files a notice of appeal rather than a cost bond.
- Each party who wishes to improve its position under the trial court's judgment must now perfect an appeal; appellees with cross-points can no longer rely on appellant's perfection of an appeal.
- Post-default judgment writ of error appeals have been replaced by "restricted appeals." For the first time, parties who timely filed a post-judgment motion can no longer pursue this type of appeal.
- The trial court clerk and the court reporter, not the appellant, are now responsible for filing the record and requesting extensions. Deadlines will be monitored by the appellate court clerk.
- In briefs, the parties can use "issues presented" instead of or in addition to points of error.
- All pleadings in original proceedings (mandamus, habeas corpus) can be combined into one document, the petition. There will be no motion for leave to file nor requirement of separate briefs. The style of a mandamus proceeding will be *"In re [name of relator]"* rather than *"Relator v. Trial Judge."*
- A motion for rehearing in the court of appeals is no longer a prerequisite to an appeal to the Supreme Court. A motion for rehearing is now optional and Supreme Court review is not limited to the matters raised in any motion for rehearing.
- The scope of reversible error is narrowed in criminal appeals.
- Instead of 50-page briefs, parties in the Supreme Court will file a 15-page petition for review or response. Petitions must concentrate on the reasons the court should hear the case. The traditional 50-page brief cannot be filed, unless requested by the court.
- Unless the Supreme Court requests it, the record will not be forwarded by the court of appeals. Instead, the petitioner will file an appendix containing certain required materials plus additional optional materials.

The following discussion expands on these changes and identifies other significant changes in the appellate rules. It is not all-inclusive. The changes are grouped by subject matter.

REPRESENTATION BY COUNSEL

The new rules specify how to determine lead counsel. "Lead counsel" for the appellant is the attorney whose signature appears first on the notice of appeal.[3] For a party other than the appellant, lead counsel is the attorney whose signature first appears on the first document filed on behalf of that party in the appellate court.[4] A party can also file a designation of lead counsel.[5] A notice of new lead counsel must be signed by the new lead counsel and either the client or previous lead counsel.[6]

All notices are to be sent to a party's lead counsel. Where a party has no lead counsel on appeal, notices must be sent to the party's lead counsel in the trial court.[7] In recommending this change, the Supreme Court Advisory Committee[8] felt that the trial attorney would be in a position to explain the notices to the client and advise the client regarding participating in the appeal. Also, in contingent fee cases, the lawyer might have an interest in the judgment, although not a formal party to the judgment.

Sending notices to the trial counsel places on the trial counsel a duty to forward information regarding the appeal to the client. The failure to forward notices to the client could give rise to a complaint by the client against the attorney. A lead counsel in the trial court who receives mailings from the appellate court or other parties can file a "non-representation notice" in the appellate court, in which event notices are to be sent to the unrepresented client.[9] An appointed lawyer in a criminal case cannot file a non-representation notice.[10]

An attorney can seek the appellate court's permission to withdraw by filing a motion for leave to withdraw.[11] The motion to withdraw must be delivered to the party, either in person or mailed to the party's last known address — by both certified and first class mail.[12]

If the court grants the motion to withdraw, the withdrawing attorney must immediately notify the party, in writing, of any deadlines or settings that were not already disclosed to the party, and a copy of that notice must be filed with the appellate court.[13] If one attorney is substituting for another, the motion to withdraw need only state the new attorney's name, address, etc. The motion must be served on the client but written notice of deadlines and settings is not required.[14]

APPELLATE TIMETABLES

There is no change in the deadlines for perfecting appeal.[15] Some other deadlines have been altered.[16] Deadlines can be extended by a motion to extend time.[17] In civil cases, the appellate court can suspend the operation of any deadline, except the deadline for perfecting appeal, for good cause on motion, or on its own initiative.[18] The old rules gave this power to the courts only in criminal cases.[19]

THE RECORD

As before, the record on appeal consists of two parts, but they have new names. What used to be called the "transcript" (pleadings, orders, and other papers filed with the trial court clerk and brought forward on appeal) will be called the "clerk's record"[20] and what used to be called the "statement of facts" (transcribed court reporter's notes and exhibits) will be called the "reporter's record."[21]

Once the notice of appeal has been filed, the trial court clerk has the duty to prepare and file the clerk's record.[22] However, the appellant now must pay or arrange to pay for the cost of the transcript before the clerk is required to file it.[23]

Unlike with the clerk's record, the appellant must request in writing the reporter's record.[24] This request is due at or before the time for perfecting appeal.[25] Once the notice of appeal has been filed, the request has been made, and the appellant has paid or arranged to pay the reporter's fee, the reporter must prepare and file the reporter's record.[26]

In ordinary civil appeals, the record must be filed in the appellate court within 60 days after the judgment is signed or 120 days if a motion for new trial is filed.[27] In criminal cases, the record is due 60 days after sentencing or after the appealable order is signed, unless a timely motion for new trial is filed and denied, in which event the record is due 120 days after sentencing.[28]

One of the most frustrating responsibilities of appellate counsel has been eliminated. Under the old rules, when court reporters failed timely to prepare their part of the record, counsel had to seek them out, obtain affidavits and file motions to extend (and sometimes seek mandamus relief). More than a few appeals have been lost because the attorney thought the court reporter filed the record.[29] Motions to extend time for filing the record are no longer necessary because the trial court clerk has the duty to file the clerk's record (formerly the transcript) and the court reporter has the duty to file the reporter's record (formerly the statement of facts).[30]

If the clerk's or reporter's record is not filed by the deadline, the appellate court clerk must notify the responsible official, with a copy to the parties and the trial judge, advising of the missed deadline and requesting that the record be filed within 30 days. If that deadline is not met, then the appellate court clerk must refer the matter to the appellate court which must make whatever order is appropriate to avoid further delay and protect the parties' rights.[31] The appellate court *must* allow the record to be filed late if the delay is not the appellant's fault, and it *may* do so when the delay is the appellant's fault.[32] The appellate court clerk should automatically check the clerk's record and the reporter's record to see that they comply with requirements.[33] If they do not, the clerk of the appellate court must contact the responsible official to have the defects corrected.[34]

Motions to supplement the records are no longer necessary. If something is omitted from the clerk's record, the parties, the trial court, or the appellate court may simply request *by letter* a supplemental clerk's record.[35] If needed items are missing from the trial court's records, the parties, can by written stipulation, substitute copies. Failing that, the trial judge, after notice and hearing, can settle the dispute.[36] Similar procedures are followed for inaccuracies in the reporter's record.[37]

It will now be possible to raise sufficiency of the evidence challenges on a partial record.[38] When a partial reporter's record is properly requested,[39] "[t]he appellate court must presume that the partial reporter's record designated by the parties constitutes the entire record for purposes of reviewing the stated points or issues."[40] However, in a criminal appeal that challenges the sufficiency of the evidence to support a finding of guilt, the reporter's record must include the entirety of the evidence on guilt and innocence.[41]

If part of the reporter's record is missing, without appellant's fault, then a new trial will be ordered, but only if a significant exhibit or a significant portion of the court reporter's notes and records that is necessary to the resolution of the appeal has been lost or destroyed.[42]

The Supreme Court will still continue to

authorize electronic reporting on a court-by-court basis through Supreme Court order. However, numerous rule changes were made to protect the integrity of the process of electronic reporting.[43] The Supreme Court Advisory Committee vigorously debated requests that electronic reporting be eliminated or receive blanket approval. In the final analysis, the Supreme Court did neither.

PERFECTING THE APPEAL

One of the greatest changes under the new Texas Rules of Appellate Procedure is the manner of perfecting appeal in a civil case. Cost bonds, formerly the usual means of perfection, have been eliminated. All appeals, except in death penalty cases,[44] are perfected by filing a written notice of appeal with the trial court clerk.[45]

The appellee can no longer "piggyback" on the appellant's perfection of an appeal. Any party who wishes to alter the trial court's judgment or interlocutory order appealed from must perfect an appeal.[46] If an appellee wishes to make changes to the judgment that only affect cross-appellees, the appellee must perfect its own appeal. However, the appellate court can grant a party who did not perfect its own appeal more favorable relief than that party received from the trial court for "just cause."[47]

APPEAL BY INDIGENT PERSONS

The provisions relating to filing a "pauper's oath" to escape advance payment of the cost of the record and filing fees in an appeal are contained in the new rule, titled "When Party is Indigent."[48] In a civil case, the party must file an affidavit making the listed financial disclosures which establish indigency.[49] Extensions of time to file an affidavit of indigence are available.[50]

The affidavit of indigence must be filed in the trial court with or before the notice of appeal.[51] For original proceedings, the affidavit must be filed in the appellate court with or before the document seeking relief.[52] A respondent who requests preparation of a record must file the affidavit of indigence in the appellate court within 15 days after the date the respondent requests preparation of the record.[53] The indigent party is no longer required to serve a copy of the affidavit on the court reporter, as under the old rule.[54]

A contest of the affidavit can be filed by the clerk, the court reporter, or any party.[55] If no contest is filed, the affidavit is taken as true and the party is allowed to appeal without paying costs.[56] If a contest is timely filed, the indigent party must prove the affidavit's allegations in a hearing.[57]

In criminal cases, an appellant who cannot pay for the appellate record can file a motion and affidavit, and after a hearing the court can order the preparation of the record at no charge to the appellant.[58]

DOCKETING STATEMENT

Although required by some courts of appeals for many years, a "docketing statement" must now be filed in every case.[59] The purpose of the docketing statement is administrative. The docketing statement has no effect on the appellate court's jurisdiction.[60]

The docketing statement should contain identifying information on: appellant's counsel; the date appeal was perfected; identifying information on the trial court; date of the judgment or order appealed from; date of post-judgment activities that could affect the appellate timetable (motion for new trial, to modify judgment, to reinstate, request for findings of fact); identifying information on all other parties to the trial court's judgment and their trial counsel; the general nature of the case (personal injury, breach of contract, temporary injunction, etc.); whether the appeal is accelerated or should be advanced for submission; whether a reporter's record has been or will be requested and whether the proceedings were electronically recorded; name of the court reporter or court recorder; whether appellant intends to seek interlocutory or ancillary relief pending appeal; dates relating to any affidavit of indigence; whether a supersedeas bond has been or will be filed; and any other information required by the appellate court.[61] Different information is prescribed for criminal appeals.[62]

SUPERSEDING THE JUDGMENT

Parties may privately contract concerning the terms for suspending judgment pending appeal. The agreement must be written and filed with the trial court clerk.[63]

The rule concerning "deposit in lieu of bond" provides other ways to post a supersedeas bond.[64] The old rules permitted the depositing of cash. The new rules permit not only cash, but also the filing with the clerk of a cashier's check made payable to the clerk; which is to be deposited immediately by the clerk. The cashier's check must be drawn on a federally or state-chartered bank or federally insured savings and loan. With leave of court, the judgment debtor also can deposit with the trial court clerk a negotiable obligation of the U.S. government or any federally insured and federally or state-chartered bank or savings and loan.[65]

An appeal of an order certifying a class no longer suspends that order or the trial on the merits.[66]

BRIEFS AND ORAL ARGUMENT IN COURTS OF APPEALS

Front and back brief covers must be durable. So the file stamp will be readable, the briefs cannot be plastic, red, black, or dark blue.[67] The appellant's brief and appellee's brief continue to be limited to 50 pages each.[68] The appellant's brief is due within 30 days from when the clerk's record and reporter's record are filed.[69] The appellee's brief is due 30 days after appellant's brief is filed.[70] Extensions are available.[71]

The concept of "issues presented" is substituted for points of error. The appellate brief can state either issues presented or points presented for review.[72] The statement of an issue or point will be treated as covering every subsidiary question that is fairly included. This new approach is closer to the federal approach, and should avoid appellate courts declaring that complaints were waived by failure to craft a technically sufficient point of error.

Now, a brief must contain a summary of the argument which is succinct, clear, and an accurate statement of the arguments.[73] This summary must not merely repeat the issues or points presented.

Appendices must be filed with the brief. They should contain key documents for the justices' easy reference when reading the brief. The appendix must include: (1) the appealable order; (2) the jury charge and verdict, or trial court's findings and conclusions; (3) the text of any rule, regulation, ordinance, statute, constitutional provision, or other law on which the argument is based, and the text of any contract or other document central to the argument.[74] The appendix may contain other items pertinent to the issues or points presented for review. The rules specifically warn against using the appendix to avoid the page limits for a brief.[75] There are special provisions for the appendix in cases where the proceedings were electronically recorded.[76]

There is now a provision for reply briefs and a deadline to file them. An appellant may file a reply brief addressing any matter in the appellee's brief.[77] The reply brief is limited to 25 pages.[78] However, an aggregate limit of 90 pages per party applies in civil cases.[79] The appellant's reply brief must be filed within 20 days after the appellee's brief was filed.[80]

The court of appeals can decide a case without oral argument if "argument would not significantly aid the court in determining the legal and factual issues presented in the appeal."[81]

COURTS OF APPEALS: OPINION, JUDGMENT AND REHEARING

The courts of appeals have authority to issue an expanded range of judgments. The court of appeals can: (1) affirm; (2) modify and affirm; (3) reverse and render; (4) reverse and remand; (5) vacate and dismiss;

and (6) dismiss. Categories 5 and 6 are new.[82] Another new provision provides that, in reversing the trial court, the court of appeals can remand for a new trial in the interest of justice instead of rendering judgment.[83] In a major change from current practice, a motion for rehearing in the court of appeals is optional and is no longer a prerequisite for review by the Supreme Court or the Court of Criminal Appeals.[84]

SUPREME COURT REVIEW

One of the most dramatic changes concerns the manner in which parties seek appellate review in the Texas Supreme Court. Traditional briefs are out. Instead, the petitioner will file a 15-page petition for review concentrating on why the Supreme Court should hear the case. The petitioner must specify the considerations for granting review, such as dissent, conflict, or importance to the jurisprudence of the state.[85] The petition must be filed with the Supreme Court clerk within 45 days of the date that the court of appeals overrules the last timely filed motion for rehearing or, if none, then 45 days after judgment is rendered.[86] If any party files a petition for review, all other parties have at least 30 more days to file their own petitions.[87]

The response is similarly limited to 15 pages.[88] It is also limited in subject matter to those issues or points presented in the petition or asserted by the respondent in its own statement of issues.[89] The response must be filed with the Supreme Court clerk within 30 days after the petition is filed.[90]

Conciseness and clarity, while always important, will now be critical. The 15-page limitation will necessarily de-emphasize the facts and emphasize the legal issues. This tilt is enhanced by the proviso that the appellate record will not be forwarded unless requested by the Supreme Court.[91] The rules eliminate full briefs on the merits, unless the Supreme Court requests them.[92]

In lieu of the record, the court will follow a procedure similar to the record excerpts practice in the Fifth Circuit.[93] The petition, as with the brief in the court of appeals,[94] must be accompanied by an appendix containing: (1) the judgment or order appealed from; (2) the jury charge and verdict or findings of fact and conclusions of law; (3) the court of appeals' opinion and judgment; and (4) the text of law on which argument is based and text of any contract or other document central to the argument.[95] The appendix may also contain optional items "pertinent to the issues or points presented for review."[96]

With or without granting the petition, the court may request briefs on the merits.[97] The petitioner's brief and the respondent's brief in reply are limited to 50 pages and the petitioner's brief in response is limited to 25 pages.[98]

MANDAMUS, HABEAS CORPUS, AND OTHER ORIGINAL PROCEEDINGS

Original proceedings have been overhauled. There is no longer a requirement of a motion for leave to file the original proceeding.[99] Except for a record, the only document that a relator must file is the petition.[100] The offending court (such as a trial judge) is no longer to be mentioned in the title of the original proceeding, even though he or she remains the respondent in the proceeding. The proper style will be "*In re [name of relator].*"[101] Other persons whose interests would be affected by the relief sought are "real parties in interest."[102] Rule 52 prescribes the contents of the documents, the procedure for granting temporary relief, and permits the imposition of sanctions upon a party or attorney who is not acting in good faith.[103]

PRESERVATION OF ERROR IN THE TRIAL COURT

As always, to complain on appeal the appellate record must reflect that a timely request, objection, or motion was presented to the trial court and that it was ruled upon by the trial court.[104] If the trial judge refuses to rule, an objection to that failure preserves the complaint.[105] This requirement of a ruling does not apply to the overruling of a motion for new trial or motion to modify by operation of law in a civil case — except

where taking evidence was necessary to properly present the complaint in the trial court.[106]

A signed, separate order is not required to preserve a complaint for appeal, as long as the trial court's ruling is reflected in the record.[107] This invalidates cases which held that a ruling on a motion for directed verdict must be in writing to be recognized on appeal.[108]

The provision in old Rule 52(d) that a sufficiency of the evidence challenge after a non-jury trial need not be preserved in the trial court, has been deleted from the rules. The provision in old Rule 52(b) about making offers of proof of excluded evidence also was deleted. In each instance, no substantive change was intended.[109]

OTHER CHANGES

Agreements of Parties and Counsel. To be enforceable, an agreement between parties or counsel concerning an appellate court proceeding must be in writing and signed by the parties or their counsel.[110] The agreement need not be made part of the appellate clerk's record. Such agreements are subject to orders of the appellate court that are necessary to ensure that the case is properly presented.[111]

Sanctions. The old rules governing sanctions on appeal[112] have been changed. Under the old rules, sanctions could be levied only where the appeal was taken for delay and without sufficient cause. The court of appeals could assess 10 percent of the judgment or 10 times costs on appeal and the Supreme Court had no limit on amount. Under the new rules, courts of appeals and the Supreme Court can award "just damages" to the party prevailing on appeal where the court determines that the appeal is "frivolous."[113] Now, sanctions can be assessed in original proceedings.[114]

Limited Appeals. Under the old rules, an appellant could limit the scope of the appeal to a severable portion of the judgment by issuing a notice of limitation of appeal.[115] That procedure is no longer available under the new appellate rules.

Cross-appeals; Multi-party Appeals. Under the old rules, in some instances there was confusion as to whether an appellee had to perfect its own appeal as against the appellant or as against other appellees.[116] Under the new rules, every party who wishes to alter the trial court's judgment or other appealable order must perfect its own appeal.[117]

Writ of Error Appeals to the Courts of Appeals. The writ of error appeal to the court of appeals, offered to parties who suffered a default judgment, is no longer provided by the appellate rules.[118] Instead, a "restricted appeal" is available to parties who did not participate in the hearing that resulted in the judgment complained of, and who did not timely file a post-judgment motion or request for findings and conclusions.[119] The deadline for perfecting a restricted appeal is six months from the date of judgment or order being attacked.[120]

Amicus Briefs. An amicus curiae brief now must identify the person or entity on whose behalf the brief is tendered, and it must disclose the source of any fee paid or to be paid for preparing the brief. The amicus brief must comply with all briefing rules for parties and must certify that copies have been served on parties.[121]

Bankruptcy. The filing of a bankruptcy petition by or against a party to a case suspends the appeal and the operation of all appellate time periods from the date the bankruptcy petition was filed, *in accordance with federal law*.[122] This suspension continues until the appellate court where the appeal is pending orders reinstatement of the case or severs the case from the debtor.[123] Upon reinstatement or severance, unexpired but suspended periods begin to run anew on the date of reinstatement or severance and run for the full period.[124]

Case law suggests that the filing of a bankruptcy by a party to an appeal stays the appellate proceeding, but only if the trial court proceeding is *against*, rather than *by*, that party.[125] The case law also indicates that appellate steps taken while an automatic stay is in effect are void. The Supreme Court Advisory Committee intended that new Rule 8 would stay the Texas appellate proceeding any time any party to a case goes into bankruptcy, regardless of whether the case being appealed is for or against the debtor. However, since the suspension of the appeal under new Rule 8.2 occurs "in accordance with federal law," it is possible that new Rule 8 may apply only when the underlying proceeding is one brought against the debtor.

Reversible Error in Criminal Cases. Under old Rule 81(b)(2), the appellate court had to reverse a conviction when the appellate record revealed error in the trial court, unless the appellate court determined beyond a reasonable doubt that the error did not contribute to the conviction or punishment. Under new Rule 44.2, that standard is carried forward only for constitutional error that is subject to harmless error review. Other non-consitutional error that does not affect substantial rights must be disregarded.[126]

CONCLUSION

A driving philosophy behind the effort to revise the appellate rules was to make them more user friendly and to permit appellate courts the flexibility to reach the merits of the case, notwithstanding less-than-optimal work by appellate counsel. The rules are now written in a more consistent and modern language. The appellate courts can now better patch a flawed record, and there should be fewer instances of waiver by improper briefing. The new Texas Rules of Appellate Procedure generally have fewer procedural pitfalls, so that more cases can be disposed of based upon the merits and not based upon procedural errors.

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1. Former Chief Justice Clarence Guittard describes the history and nature of the rule-making process in *A Review of Court Managed Procedural Reform in Texas*, 60 Tex. B. J. 404 (1997).
2. The proposed rules are expected to be slightly revised on Aug. 4, 1997, after press time for this article. No substantive changes are expected, with one exception — a rule may be promulgated to permit recusal of a justice for accepting campaign contributions from the opposing party or lawyer in excess of the limits set by the Judicial Campaign Fairness Act, Tex. Elec. Code Ann. § 253.155 (Vernon Supp. 1997). This change was recommended by the Texas Commission on Judicial Efficiency in its Jan. 14, 1997 report.
3. Tex. R. App. P. 6.1(a). Unless indicated otherwise, citations are to the new Texas Rules of Appellate Procedure.
4. Tex. R. App. P. 6.1(b).
5. Tex. R. App. P. 6.1(c).
6. Tex. R. App. P. 6.1(c).
7. Tex. R. App. P. 6.3(b). *See* Tex. R. Civ. P. 8, concerning attorney in charge in the trial court.
8. The Supreme Court Advisory Committee, a committee of lawyers, judges, and court personnel, is appointed by the Supreme Court to recommend changes to the rules of procedure and evidence. Many of the changes to the appellate rules were devised by the advisory committee.
9. Tex. R. App. P. 6.4. The notice must state that the attorney is not representing the client on appeal, that future communications should be sent directly to the party, and the name, address, and telephone number of the party. The notice must be signed by the client.
10. Tex. R. App. P. 6.4(b).
11. Tex. R. App. P. 6.5. The motion must contain: (1) a list of current deadlines and settings; (2) the party's last known address and telephone number; (3) a statement that the motion was delivered to the party; and (4) a statement that the party was notified in writing of the right to object to the motion. Tex. R. App. P. 6.5(a).
12. Tex. R. App. P. 6.5(b).

13. Tex. R. App. P. 6.5(c).
14. Tex. R. App. P. 6.5(d).
15. *Civil Cases.* In the ordinary civil case, appeal must be perfected within 30 days after the judgment is signed. Tex. R. App. P. 26.1. However, the deadline for perfecting appeal is extended to 90 days after the judgment is signed if any party timely files: (1) a motion for new trial; (2) a motion to modify the judgment; (3) a motion to reinstate after a dismissal for want of prosecution; or (4) a request for findings of fact and conclusions of law, if findings and conclusions either are required by the Texas Rules of Civil Procedure or, if not required, could properly be considered by the appellate court. Tex. R. App. P. 26.1(a). In an accelerated appeal, the deadline for perfecting appeal is 20 days after the judgment or appealable interlocutory order is signed. Tex. R. App. P. 26.1(b). In a restricted appeal (which has replaced writ of error appeal from a default judgment), an appeal must be perfected within six months after the judgment or order is signed. Tex. R. App. P. 26.1(c). If the party to first perfect an appeal does so within the 14-day deadline for perfecting appeal, all other parties have up to 14 days after the first timely perfection to perfect their own appeals. Tex. R. App. P. 26.1(d).

    Criminal Cases. In criminal cases, the defendant may perfect an appeal within 30 days of the day the sentence is imposed or suspended, or after the trial court signs an appealable order. Tex. R. App. P. 26.2(a)(1). If the defendant timely files a motion for new trial, the defendant can perfect an appeal within 90 days after the day the sentence is imposed or suspended. Tex. R. App. P. 26.2(a)(1). The state can perfect an appeal within 15 days after the day the trial court enters the order, ruling, or sentence to be appealed. Tex. R. App. P. 26.2(b).

    Extensions. The appellate court may extend the time to perfect appeal if within 15 days after the deadline the party (1) files in the trial court the notice of appeal, and (2) files in the appellate court a motion to extend time in compliance with Rule 10.5(b). Tex. R. App. P. 26.3. The ability to extend the deadlines for perfecting appeal applies to accelerated appeals as well as appeals from ordinary judgments in civil cases. Tex. R. App. P. 26, *Notes and Comments.*
16. See the discussion of deadlines in the area of this article relating to the item to be filed.
17. Tex. R. App. P.10.5(b), describing motion to extend time.
18. Tex. R. App. P. 2. New Rule 2 permits the appellate court to suspend the operation of any rules in a particular case, and to order a different procedure, to expedite a decision, or for other good cause. *Id.* However, this power does not extend to altering the time for perfecting an appeal in a civil case or for suspending any provision in the Texas Code of Criminal Procedure. *Id.*
19. Former Tex. R. App. P. 2(b).
20. Tex. R. App. P. 34.5.
21. Tex. R. App. P. 34.6.
22. Tex. R. App. P. 35.3(a). The new rules omit the provision in the old rules, saying that failure to make timely designation of items to include in the transcript waives the right to complain of omissions. Tex. R. App. P. 34.5.
23. Tex. R. App. P. 35.3(a)(2). Under the old rule, the trial court clerk could not require payment as a condition of filing the transcript. *Click v. Tyra*, 867 S.W.2d 406, 407 (Tex. App. — Houston [14th Dist.] 1993, orig. proceeding). Payment is not required by a party entitled to appeal without advanced payment of the fee; Tex. R. App. P. 35.3(a)(2) and *see infra, Appeal by Indigent Persons* and Tex. R. App. P. 20.
24. Tex. R. App. P. 34.6(b)(1).
25. *Id.*
26. Tex. R. App. P. 35.3(b). Payment is not required of a party entitled to appeal without advance payment of the fee. *Id.*
27. Tex. R. App. P. 35.1. For accelerated appeals, the record must be filed within 10 days of the filing of a notice of appeal. Tex. R. App. P. 35.1.
28. Tex. R. App. P. 35.2.
29. *See, e.g., White v. White*, 700 S.W.2d 317, 318 (Tex. App. — Corpus Christi, 1985, writ ref'd n.r.e.).
30. Tex. R. App. P. 35.3, *Notes and Comments.*
31. Tex. R. App. P. 37.3.
32. Tex. R. App. P. 35.3(c).
33. Tex. R. App. P. 34.5(d) and 37.2.
34. Tex. R. App. P. 37.2.
35. Tex. R. App. P. 34.5(c).
36. Tex. R. App. P. 34.5(e).
37. Tex. R. App. P. 34.6(e).
38. This change overrules the Supreme Court's holding that a complaint about the legal or factual sufficiency of the evidence cannot be successfully raised without a complete statement of facts. *Schafer v. Conner*, 813 S.W.2d 154, 155 (Tex. 1991); *Englander Co. v. Kennedy*, 428 S.W.2d 806, 806 (Tex. 1968) (per curiam).

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39. Under Tex. R. App. P. 34.6(c)(1), the appellant can request a partial reporter's record but must include in the request a statement of the points or issues to be presented on appeal. The appellant will be limited to those points or issues. Other parties may designate that additional exhibits or testimony be included at appellant's expense, subject to the trial court shifting that cost to the appellee. Tex. R. App. P. 34.6(c)(2) and (3).
40. Tex. R. App. P. 34.6(c)(4). For the presumption to apply to a sufficiency of the evidence challenge, the challenge must attack a specific factual finding, whether a jury answer or trial court finding. *Id.*
41. Tex. R. App. P. 34.6(c)(5).
42. Tex. R. App. P. 34.6(f). The same is true if the trial was electronically recorded and a significant portion of the recording has been lost or destroyed. *Id.*
43. Tex. R. App. P. 13.2.
44. In a death penalty case it is not necessary to file a notice of appeal. Tex. R. App. P. 25.2(a).
45. Tex. R. App. P. 25.1; 25.2(a)(b)(1). In a notice filed with the appellate court clerk, the appellant must: (1) give the number and style of the case and trial court where it is pending; (2) give the date of the judgment or order appealed from; (3) state the party's desire to appeal; (4) state the court to which the appeal is taken (or in the case of the first and 14th courts of appeals, to either of them); (5) the name of each party filing the notice; and (6) in an accelerated appeal, the fact that the appeal is accelerated. Tex. R. App. P. 25.1(d), (e).
46. Tex. R. App. P. 25.1(c).
47. *Id.*
48. Tex. R. App. P. 20.
49. Tex. R. App. P. 20.1(a).
50. Tex. R. App. P. 20.1(c)(3).
51. Tex. R. App. P. 20.1(c)(1). An appellee who wishes to invoke this provision must file its affidavit within 15 days after the date when the appellee becomes responsible for paying a cost. *Id.*
52. Tex. R. App. P. 20.1(c)(2).
53. *Id.*
54. Tex. R. App. P. 20.1(d)(1), *Notes and Comments.*
55. Tex. R. App. P. 20.1(e).
56. Tex. R. App. P. 20.1(f).
57. Tex. R. App. P. 20.1(g) and (i).
58. Tex. R. App. P. 20.2.
59. Tex. R. App. P. 32.
60. Tex. R. App. P. 32.4.
61. Tex. R. App. P. 32.1.
62. Tex. R. App. P. 32.2.
63. Tex. R. App. P. 24.1(a)(1).
64. Tex. R. App. P. 24.1(c).
65. Tex. R. App. P. 24.1(c)(1)(C).
66. Tex. R. App. P. 29, *Notes and Comments.*
67. Tex. R. App. P. 9.4(f).
68. Tex. R. App. P. 38.4.
69. Tex. R. App. P. 38.6(a). In an accelerated appeal, appellant's brief is due in 20 days. *Id.*
70. Tex. R. App. P. 38.6(b). In an accelerated appeal, appellee's brief is due in 20 days. *Id.*
71. Tex. R. App. P. 38.6(d).
72. Tex. R. App. P. 38.1(e).
73. Tex. R. App. P. 38.1(g).
74. Tex. R. App. P. 38.1(j)(1).
75. Tex. R. App. P. 38.1(j)(2).
76. Tex. R. App. P. 38.5.
77. Tex. R. App. P. 38.3.
78. Tex. R. App. P. 38.4.
79. *Id.*
80. Tex. R. App. P. 38.6(c).
81. Tex. R. App. P. 39.8.
82. Tex. R. App. P. 43.2, *Notes and Comments.*
83. Tex. R. App. P. 43.3.
84. Tex. R. App. P. 49.9.
85. The rule governing contents of petitions for review, Rule 53.2(i), directs that the argument should state the reasons why the Supreme Court should exercise jurisdiction to hear the case "with specific reference to the factors listed in Rule 56.1(a)." Rule 56.1(a) provides:

    Whether to grant review is a matter of judicial discretion. Among the factors the Supreme Court considers in deciding whether to grant a petition for review are the following:

    (1) whether the justices of the court of appeals disagree on an important point of law;
    (2) whether there is a conflict between the courts of appeals on an important point of law;
    (3) whether a case involves the construction or validity of a statute;
    (4) whether a case involves constitutional issues;
    (5) whether the court of appeals appears to have committed an error of law of such importance to the state's jurisprudence that it should be corrected; and
    (6) whether the court of appeals has decided an important question of state law that should be, but has not been, resolved by the Supreme Court.
86. Tex. R. App. P. 53.7(a).
87. Tex. R. App. P. 53.7(c).
88. Tex. R. App. P. 53.3 requires that the response conform to the requirements set out for the petition for review, which includes the 15-page limitation.
89. Tex. R. App. P. 53.3(e).
90. Tex. R. App. P. 53.7(d).
91. Tex. R. App. P. 54.1. The Supreme Court may request the record, whether or not it grants review. Tex. R. App. P. 54.1.
92. Tex. R. App. P. 55.1. *See* Tex. R. App. P. 55 for further details on the contents and time for filing briefs.
93. Fed. R. App. P. 30.1 (5th Cir. Loc. R.) provides that the appellant file record excerpts. Nonetheless, the entire record is on file in the 5th Circuit. Fed. R. App. P. 30.1.1 (5th Cir. Loc. R.) (except under a pilot project in the Southern District).
94. Tex. R. App. P. 38.1(j).
95. Tex. R. App. P. 53.2(k)(1).
96. Tex. R. App. P. 53.2(k)(2).
97. Tex. R. App. P. 55.1.
98. Tex. R. App. P. 55.6. The page limitations do not include pages containing the identity of the parties and counsel, table of contents, index of authorities, statement of the case, statement of jurisdiction, and issues presented. *Id.*
99. Tex. R. App. P. 52, *Notes and Comments.*
100. Tex. R. App. P. 52.1.
101. *Id.*
102. Tex. R. App. P. 52.2.
103. Tex. R. App. P. 52.10.
104. Tex. R. App. P. 33.1(a).
105. Tex. R. App. P. 33.1(a)(2)(B).
106. Tex. R. App. P. 33.1(b).
107. Tex. R. App. P. 33.1(c).
108. See e.g., *Soto v. Southern Life & Health Ins. Co.,* 776 S.W.2d 752, 754 (Tex. App. — Corpus Christi 1989, no writ); criticized in *Sipco Services Marine, Inc. v. Wyatt Field Service Co.*, 857 S.W.2d 602, 608-09 (Tex. App. — Houston [1st Dist.] 1993, no writ) (Cohen, J., concurring).
109. The Supreme Court felt that the principle of no need to preserve a sufficiency of the evidence attack in a non-jury trial was sufficiently reflected in Tex. R. Civ. P. 324. The Supreme Court felt that the offer of proof requirement in Tex. R. Civ. Evid. 103(b) did not require repeating in the appellate rules.
110. Tex. R. App. P. 6.6.
111. *Id.*
112. Former Tex. R. App. P. 84 (court of appeals) and former Tex. R. App. P. 182 (Supreme Court).
113. Tex. R. App. P. 45 (courts of appeals) and Tex. R. App. P. 62 (Supreme Court).
114. Tex. R. App. P. 52.10.
115. Former Tex. R. App. P. 40(a)(4).
116. *See* 6 McDonald Texas Civil Appellate Practice § 27:2 (Orsinger 1992).
117. Tex. R. App. P. 25.1(c).
118. However, the remedy continues to be discussed in Tex. Civ. Prac. & Rem. Code Ann. § 51.012 (Vernon 1997).
119. Tex. R. App. P. 30.
120. Tex. R. App. P. 26.1(c).
121. Tex. R. App. P. 11.
122. Tex. R. App. P. 8.3.
123. *Id.*
124. Tex. R. App. P. 8.2.
125. *See* 6 McDonald's Texas Civil Appellate Practice § 12.43 (Orsinger 1992).
126. Tex. R. App. P. 44.2(a) & (b). Texas Court of Criminal Appeals Judges Baird and Overstreet expressed reservations about the propriety of this change, which in their view restricts the right of redress from its level under old Rule 81(b)(2). *See* 60 Tex. B.J. 408-09 (May 1997).

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